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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,486	12/11/2003	Wolfgang Niessen	588.1005	7690

23280 7590 12/28/2006
DAVIDSON, DAVIDSON & KAPPEL, LLC
485 SEVENTH AVENUE, 14TH FLOOR
NEW YORK, NY 10018

EXAMINER

SICONOLFI, ROBERT

ART UNIT	PAPER NUMBER
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3683

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/28/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/733,486

Applicant(s)

NIESSEN, WOLFGANG

Examiner

Robert A. Siconolfi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 21 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5 and 8-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

2. In view of the Appeal Brief filed on 9/21/06, PROSECUTION IS HEREBY REOPENED. The new grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

James McClellan.


JAMES MCCLELLAN
SUPERVISORY PATENT EXAMINER
12/26/06

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1,3-5,8-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasa in view of Muramoto (U. S. Patent no. 6,609,994).

Sasa discloses:

Sasa discloses a clutch 2, clutch actuator 21, transmission input speed sensor 33, brake pedal sensor 42, engine speed sensor 13, power adjustment actuator 11, controller 5.

See figure 5 for control of creep. Clutch position is linearly varied with brake actuation and adjusted by corrective factors in order to determine vehicle speed..

Regarding claims 1 and 16, Sasa does not specifically disclose a speed setpoint. Sasa is controlling the clutch engagement to target a specific speed by adjusting for different conditions like load and gradient (e.g. Column 9 lines 2-11). Sasa even allows for the driver to adjust the creep relative to the brake position through device 9. Sasa is targeting a particular speed implicitly rather than explicitly. Muramoto teaches targeting a specific speed based on brake pedal position (see figure 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a target speed (setpoint) as taught by Muramoto in the system of Sasa rather than an implicit target as such is merely a control design. The effect of the two systems is the same as clutch engagement needs to be controlled in order to achieve a speed setpoint. Obtaining a set speed is clearly the object of Sasa or device 9 would not exist.

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Regarding claims 3-5, Sasa does not disclose the specific method of detecting brake actuation (force, position, or pressure). All the claimed methods are well known and it would have been obvious to one of ordinary skill in the art at the time the invention was made to use force, position, or pressure to determine the brake actuation based on factors like cost and reliability and redundancy with other systems like ABS and TCS.

5. Claims 1,3-5,8-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasa in view of De La Salle et al (U. S. Patent no. 7,035,727).

Sasa discloses:

Sasa discloses a clutch 2, clutch actuator 21, transmission input speed sensor 33, brake pedal sensor 42, engine speed sensor 13, power adjustment actuator 11, controller 5.

See figure 5 for control of creep. Clutch position is linearly varied with brake actuation and adjusted by corrective factors in order to determine vehicle speed..

Regarding claims 1 and 16, Sasa does not specifically disclose a speed setpoint. Sasa is controlling the clutch engagement to target a specific speed by adjusting for different conditions like load and gradient (e.g. Column 9 lines 2-11). Sasa even allows for the driver to adjust the creep relative to the brake position through device 9. Sasa is targeting a particular speed implicitly rather than explicitly. De La Salle et al teaches targeting a specific speed based on brake pedal position (see figure 2b). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a target speed (setpoint) as taught by De La Salle et al in the system of Sasa rather

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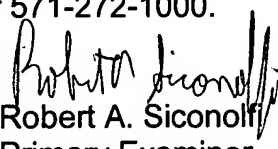
than an implicit target as such is merely a control design. The effect of the two systems is the same as clutch engagement needs to be controlled in order to achieve a speed setpoint. Obtaining a set speed is clearly the object of Sasa or device 9 would not exist. Regarding claims 3-5, Sasa does not disclose the specific method of detecting brake actuation (force, position, or pressure). All the claimed methods are well known and It would have been obvious to one of ordinary skill in the art at the time the invention was made to use force, position, or pressure to determine the brake actuation based on factors like cost and reliability and redundancy with other systems like ABS and TCS.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Siconolfi whose telephone number is 571-272-7124. The examiner can normally be reached on M-F 10 am-3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James McClellan can be reached on 571 272-6786. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Robert A. Siconolfi
Primary Examiner
Art Unit 3683

12/21/06

RS